IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE EIGHTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 1460 of 2002

Between:

The Krishna District Co-operative Central Bank Employees Union (Regd.No.C.333), Machilipatnam, Krishna District. Rep by General Secretary

Sri I.Panduranga Rao,

R/o Machilipatnam, Krishna District.

..... PETITIONER

AND

1 The Registrar of Co-operative Societies, Andhra Pradesh, Gruhakalpa Building, Opp.Gandhi Bhavan, Nampally, Hyderabad.
2 The Krishna District Co-operative Central Bank Ltd., Rep.by its General Manager, Machilipatnam, Krishna District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to call for the records from the respondents and issue an appropriate Writ, Order or Direction, particularly one in the nature of Writ of Mandamus, declare and hold that the promotion policy of the 2nd respondent in Circular No.Estt.2001-02, dated 3-10-2001 as illegal unjust, contrary to law, contrary to the provisions of Section 116(C) of the A.P. Co-operative Societies Act, 1964 and further declare that the promotion policy cannot be made applicable to the existing employees of the 2nd respondent bank with retrospective effect, as the same as arbitrary, discriminatory and violative of Articles 14, 16 and 21 of the Constitution of India; and grant all consequential benefits; and pass such other order or orders as deemed fit and proper under the circumstances of the case.

Counsel for the Petitioner: MR.A.K.JAYAPRAKASH RAO

Counsel for the Respondent No.1: G.P. FOR COOPERATION
Counsel for the Respondent No.2: MR.B.ADINARAYANA RAO

The Court made the following:

The Hon'ble Sri Justice

K.C. Bhanu

W.P. No. 1460 of 2002

O R D E R:

This writ petition is filed seeking to declare the promotion policy of the 2nd respondent in Circular No.Estt.2001-02 dated 3.10.2001 as illegal and contrary to the provisions of Section 116-C of the A.P. Cooperative Societies Act and that such promotion policy cannot be made applicable to the existing employees of the 2nd respondent-bank with retrospective effect.

The brief facts that are necessary for the disposal of this case are as follows:

The petitioner union is consisting of 165 members. It is stated that the members of the petitioner-union have entered into the service of the 2nd respondent-bank and put in service ranging from 15 to 25 years in various categories. The promotion policy now sought to be implemented by the 2nd respondent is going to affect at least 100 members of the petitioner union depriving them of the promotion. The new promotion policy dated 3.10.2001 should be

made applicable to only such of those employees who entered the service after introduction of the policy but the same is made applicable with retrospective effect. About 50 members of the petitioner union were not promoted even at one time till this day and they are entitled for promotion as per the Circular issued by the 1st respondent dated 15.3.1979 and 22.6.1999, whereas the promotion policy now sought to be implemented by the 2nd respondent dated 3.10.2001 would deprive the members of the petitioner union of any promotion for the reason that now the minimum qualification fixed to the Staff Assistant to the post of Assistant Managers is Intermediate. The introduction of new promotion policy would be detrimental to the interests of the existing employees working in the 2nd respondent bank and also further promotion to various posts such as Manager and Asst. Manager, as the educational qualification in the new promotion policy is graduate and post graduate diploma in rural credit service. Hence the writ petition.

The 2nd respondent filed counter affidavit stating that the Board of Directors of Krishna D.C.C. Bank approved a new promotion policy for the employees of the bank in their resolution No.5 dated 28.2.2001 and it was communicated to the employees on 3.10.2001 stating that its implementation was subject to approval of service regulations of the Bank. The 1st respondent through his letter dated 4.11.2003 informed that his office has no objection to the proposed changes in the promotion policy. However, as the matter was pending in the High Court, the 1st respondent advised the bank not to effect the new promotion policy till the judgment is delivered. As the new promotion policy has been accepted by the 1st respondent, the

question of its contravention with the circulars dated 15.3.1979 and 22.6.1999 does not arise. The apprehension of the petitioner that the new promotion policy affects at least 100 members of its union is not based on facts. As no promotions are contemplated in the near future before they retire due to heavy cost of establishment, there is no loss of promotion in their case. The respondent bank will not discriminate any members of the petitioner union if they are otherwise eligible for promotion. The contention of the petitioner that new promotion policy should be made applicable to the new candidates appointed after the introduction of the policy and that the same should not be made applicable to the existing candidates is not correct in view of fast emerging changes in the banking sector and in view of the latest orders of the 1st respondent dated 4.11.2003. Hence the writ petition is liable to be dismissed.

Learned counsel for the petitioner contended that without the approval of the 1st respondent as per Section 116-C of the Cooperative Societies Act the 2nd respondent issued promotion policy with retrospective effect taking away the existing rights of the employees and therefore he prays to set aside the same. He further contended that the members of the petitioner union numbering 50 were not promoted even once in the entire service and they are entitled for promotion as per the regulations of the 1st respondent dated 15.3.1979 and 22.6.1999. Because of the promotion policy now sought to be implemented by the 2nd respondent the members of the petitioner would be deprived of the promotion. Therefore it is detrimental to the interest of the existing employees of the 2nd

respondent bank and hence he prays to set aside the existing promotion policy dated 3.10.2001.

On the other hand, learned counsel for the respondent No.2 contended that the promotion policy dated 3.10.2001 would be implemented subject to approval of the service regulations of the bank and the 1st respondent has no objection for the proposed changes in the promotion policy and the apprehension of the petitioner that new promotion policy affects at least 100 members of the petitioner union is incorrect as no promotions are contemplated in the near future. The respondent bank is not discriminating any members of the petitioner union and there are no grounds to interfere with the impugned proceedings.

Though it is contended by the learned counsel for the petitioner that the Registrar of the Cooperative Societies has not approved the new promotion policy, but the 2nd respondent in his counter specifically stated that the new promotion policy was approved by the 1st respondent through his letter Rc.No.36777/03/B1/Z.11 dated 4.11.2003 stating that the office has no objection to the proposed changes in the promotion policy. Since the matter is pending before this court because of an interim direction, the 1st respondent advised the bank not to effect the new promotion policy till the judgment is delivered. Since the new promotion policy has been accepted by the 1st respondent, the same has to be implemented by the 2nd respondent bank unless there is discrimination in issuing the said promotion policy. The case of the petitioner union is that the members of the petitioner union,

numbering 50, were not promoted even at one time till this day and therefore they are entitled for promotion as per the Circular issued by the 1st respondent dated 15.3.1979 and 22.6.1979. The apprehension of the petitioner union is that the policy now sought to be implemented by the 2nd respondent dated 3.10.2001 would deprive the members of the petitioner union of any promotion for the reason that now the qualification fixed to the Staff Assistant to the post of Assistant Managers is Intermediate whereas prior to the introduction of new policy the qualification was only Matriculation and therefore the new promotion policy would be detrimental to the interest of the existing employees working in the 2nd respondent bank. According to the learned counsel, all the members of the petitioner union are undergraduates as they are only Matriculates and therefore if the new promotion policy is made applicable to the existing staff, it will deprive them of any promotions. He also contended that the said promotion policy cannot be made applicable retrospectively depriving the existing employees of the 2nd respondent bank.

Learned counsel for the petitioner relied upon a decision in **A.A. Calton v. Director of Education and another** wherein it is held:

> "It is no doubt true that the act was amended by U.P. act 26 of 1975 which came in to force on august 18, 1975 taking away the power of the Director to make an appointment under section 16-F(4) of the act in the case of minority institutions. The amending Act did not, however, provide expressly that the amendment in question would apply to pending proceedings under section 16-F of the

> Act. Nor do we find any words in it which by necessary intendment would affect such pending proceedings. The process of selection under section 16-F of the Act commencing from the stage of calling for applications for a post up to the date on which the Director becomes entitled to make a selection under section 16-F(4) (as it stood then) is an integrated one. At every stage in that process certain rights are created in favour of one or the other of the candidates. Section 16-F of the Act cannot, therefore, be construed as merely a procedural provision. It is true that the legislature may pass laws with retrospective effect subject to the recognized constitutional limitations. But it is equally well settled that no retrospective effect should be given to any statutory provision so as to Impair or take away an existing right, unless the statute either expressly or by necessary implications directs that it should have such retrospective effect".

There is no dispute about the above proposition of law because any provision which will take away the existing right cannot be made with retrospective effect. Although an employee has no right to be promoted, he has a right to be considered for promotion. The policy relating to promotion must be legally and constitutionally valid i.e. not *ultra vires* any provision of the Constitution or the rule making power. Since the petitioner has no right in the matter of promotion, the question of taking away the existing right of the petitioner union does not arise. The reason for change of the policy is that the existing environment in the banking industry requires highly qualified, competent and dynamic personnel to occupy the pivotal position in the organization, failing which it will be very difficult to compete with the market affairs in the industry. The 2nd respondent-bank is seeking

to encourage the merit and competence in order to recognize their services and give them proper positions in the organization/structure for which all the employees are eligible to compete by acquiring competency, skill, qualifications etc. By introduction of new policy, the 2nd respondent bank will not discriminate any members of the petitioner union. If the members of the petitioner union are otherwise eligible for promotion, they will be treated on par with other qualified members. In view of the fact that there was change in the banking sector and heavy competition in extending the qualitative service, the minimum educational qualification of Intermediate to the post of Assistant Manager and graduates to the post of Manager and Assistant General Manager as fixed under the new promotion policy cannot be said to be extraordinary since there are adequate facilities extended by several universities for acquiring the above qualifications. The interested candidates can easily acquire such qualifications so as to enable them to get promotion under the new policy. By virtue of this policy, there is no discrimination as such among the members of one particular cadre. Under the existing policy for a person for promotion from Staff Assistant to Assistant Manager the initial qualification for appointment is Matriculation, for promotion as Assistant Manager a matriculate should possess a minimum service of 5 years, a graduate should possess 2 years service and a post graduate should possess one year service and the promotion is strictly on seniority basis. However, under the new promotion policy a Staff Assistant should possess PUC/Intermediate with diploma in Cooperation and completion of 5 years of service and the promotion will be made by the Board on the recommendation of the promotion committee consisting of General Manager, Deputy

General Manager and the Assistant General Manager (Estt) on the basis of merit with due regard to seniority. Therefore, the said policy which was introduced by the respondent No.2 after approval of the competent authority as required under Section 116-C of the Cooperative Societies Act cannot be said to be illegal and arbitrary. It is not out of place to mention that there are 453 employees in all cadres of Bank excluding common cadre employees of APCOB working in the Bank. As against the same, 150 employees belong to the petitioner union and the remaining belong to another union. The apprehension of the petitioner that the new promotion policy affects at least 100 members of the petitioner union is not based on facts if the following details are taken into consideration as stated by the respondent No.2 in the counter:

1. No. of drivers (6) and Attenders (107) who are having Educational Qualification “below SSC” are not eligible for promotion to V category even under existing promotion policy since they do not possess the required qualification of Matriculation.

2. Asst. Managers not having even “Matriculation” qualification are not eligible for promotion even under existing promotion policy.

3. Employees having graduation and post graduation qualification who are eligible for promotion under the new promotion policy.

4. Balance of the employees who are having qualification of SSC/SSLC/PUC but not having higher qualification for promotion under the new promotion policy

Out of 242 employees, 60 employees are due to retire before 31.12.2005. There will not be more than 50 employees belonging to the petitioner union who may be affected on account of introduction of the new promotion policy. Therefore, it cannot be said that to deprive the members of the petitioner union of their promotion the new policy has been introduced, but the same has been introduced in order to encourage the merit and competency to compete with the market affairs, with the approval of the competent authority. The said new policy will not discriminate the members of a particular union, as the same will be uniformly applied to all the members working in the bank. Therefore, it cannot be said that the new promotion policy is illegal or in violation of any statutory laws. Since the members of the petitioner union have no right for promotion, the question of taking away their right under the new policy does not arise.

For the aforesaid reasons, the writ petition is devoid of merit and the same is accordingly dismissed.

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K.C. Bhanu, J.

Date: 08--07—2005.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Registrar of Co-operative Societies, Andhra Pradesh, Gruhakalpa Building,

Opp.Gandhi Bhavan, Nampally, Hyderabad.
2. The General Manager, Krishna District Co-operative Central Bank Ltd., Machilipatnam, Krishna District.

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